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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HASTINGS COLLEGE OF THE LAW, a
public trust and institution of higher
education duly organized under the
laws and the Constitution of the
State of California;

FALLON VICTORIA, an individual;
RENE DENIS, an individual;
TENDERLOIN MERCHANTS AND
PROPERTY ASSOCIATION, a
business association;

RANDY HUGHES, an individual; and
KRISTEN VILLALOBOS, an individual,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal entity,

Defendant.

Case No. 4:20-cv-03033-JST

**PLAINTIFF'S RESPONSE TO
MOTION FOR LEAVE TO FILE
BRIEF OF AMICUS CURIAE**

**ASSIGNED FOR ALL PURPOSES
TO THE HONORABLE JON S.
TIGAR**

Action filed: 05/04/2020
Trial Date: (None yet set)

Plaintiffs take no position on the ACLU's Motion for Leave to File a Brief of Amicus Curiae.

Plaintiffs note that under Federal Rule of Civil Procedure 29(a)(3), for a Motion for Leave to be granted, the movant's must state in their brief: (1) their interest; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

By not support or opposing the ACLU's Motion, Plaintiffs do not waive any objections, including, but not limited to: standing, ripeness, presence of a case or controversy, justiciability, or political question – nor do Plaintiffs waive objection or reply to the ACLU's statements of fact or law.

The ACLU states it has a “strong interest in the issues before this Court” and

1 believes the information presented in their brief “will significantly aid the Court in
2 the resolution of the questions raised herein.” Amicus’ Mot. for Leave 1:5, 1:15-16.
3 However, the issues in its brief are not the issues in the above-captioned claim, and
4 Plaintiffs are unsure how the ACLU’s brief supports Proposed Intervenor’s Motion
5 for Intervention, which is before this Court and has yet to be decided on the merits.

6 The ACLU states several reasons for its support of Proposed Intervenor’s
7 Motion. First, the ACLU believes “[t]he Proposed Injunction likely violates several
8 constitutional amendments.” Brief of Amicus Curiae 3:10. The ACLU correctly
9 asserts under *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), a municipality
10 cannot criminalize sleeping outdoors, under the Eighth Amendment, when no
11 sleeping space is practically available in any shelter.

12 The ACLU, similar to Proposed Intervenor, has seemingly misinterpreted
13 *Martin* in several ways. First, the ACLU assumes the removal of encampments that
14 block public sidewalks is *de facto* criminalization of homelessness. Brief of Amicus
15 Curiae 3:23-24 (“Clearly ‘enforcement measures’ implies criminalization of those who
16 may not elect to be ‘enforced’”). However, a municipality’s decision to require
17 unhoused persons to vacate their encampment does not, by itself, implicate any
18 criminal sanctions that trigger Eighth Amendment protections. *Shipp v. Schaaf*, 379
19 F.3d 1033, 1037 (N.D. Cal. 2019). *Martin* states: “Nor do we suggest that a
20 jurisdiction with insufficient shelter can *never* criminalize the act of sleeping
21 outside.” *Martin*, 920 F.3d at 617 n.8. An ordinance barring the obstruction of public
22 rights of way, such as sidewalks, or the erection of certain structures, such as tents,
23 may well be constitutionally permissible under the Ninth Circuit’s holding. *Id.* at 617
24 n.8.

25 In addition, the ACLU believes the Proposed Injunction “likely” violates
26 Proposed Intervenor’s rights to Fourth and Fourteenth Amendment protections
27 under *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012). Similar to *Shipp*,
28 Plaintiffs believe a municipality’s decision to require unhoused persons to vacate

1 encampments that block public sidewalks does not necessarily implicate any Fourth
2 or Fourteenth Amendment violations under *Lavan*.

3 By fundamentally misunderstanding these holdings, it is unclear how the
4 ACLU's brief "significantly aids" the question of Proposed Intervenor's "significant
5 protectable interest" in the above-captioned claim.

6 Second, the ACLU states the perspective and voices of Black people and Black
7 transgender, gender variant, and intersex individuals are noticeably missing from
8 the Proposed Injunction. Brief of Amicus Curiae 5:12. It is unclear how this
9 assertion supports Proposed Intervenor's Motion. In their Complaint, Plaintiffs
10 acknowledge and understand the Tenderloin is a diverse community. Compl. 1:3-6.
11 Further, the issue of whether Plaintiffs adequately represent Proposed Intervenor's
12 viewpoints, in the interest of clear, accessible sidewalks, is already before this Court.
13 The ACLU's support does not demonstrate how their Brief "significantly aids"
14 Proposed Intervenor's Motion for Intervention in the resolution of this issue.

15 Plaintiffs continue to request the Court enter the Stipulated Injunction,
16 regardless of how it rules on this Motion for Leave to File a Brief of Amicus Curiae.

17 Dated: June 29, 2020

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